

		OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS MUNDRA COMMISSIONERATE Custom House, Mundra (Kachchh) MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 PHONE No: 02838-271165/66/67/68, FAX No.02838-271169/62		
A	FILE NO.	GEN/ADJ/ADC/644/2023-ADJN.		
B	ORDER-IN- ORIGINAL NO	MCH/ADC/MK/ 140 /2023-24		
C	PASSED BY	MUKESH KUMARI, ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MUNDRA.		
D	DATE OF ORDER	18.08.2023		
E	DATE OF ISSUE	18.08.2023		
F	SCN NUMBER AND DATE	GEN/ADJ/ADC/644/2023-ADJ DTD. 23.03.2023		
G	NOTICEE / PARTY / IMPORTER	M/S SINGLA TIMBERS PRIVATE LIMITED, B-41, UNDER BRIDGE ROAD, NEAR E.S.I. HOSPITAL, RAJPURA, DIST. PATIALA, PUNJAB -140 401		
H	DIN NUMBER	20230871M0000000FDAD		

1. The Order – in – Original is granted to concern free of charge.
2. Any person aggrieved by this Order – in – Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. 1 to

**The Commissioner of Customs (Appeal), MUNDRA
4th floor, HUDCO Building, IshwarBhuvan Road,
Navrangpura, Ahmedabad- 380009.**

3. Appeal shall be filed within Sixty days from the date of Communication of this Order.
4. Appeal should be accompanied by a Fee of Rs. 5/- (Rupees Five Only) under Court Fees Act it must accompanied by (i) copy of the Appeal, (ii) this copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five Only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
5. Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.
6. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respect.
7. An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty or Penalty are in dispute, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE :

M/s Singla Timbers Private Limited, B-41, Under Bridge Road, Near E.S.I. Hospital Rajpura, Dist. Patiala, Punjab -140401 (IEC-3009017405) (in short "the Auditee" or 'Noticee') The Auditee is engaged in import of Timbers, Wall Panels, Walnuts, Face Veneer through various Customs Ports i.e. Mundra, Kandla, Nhava Sheva and Ludhiana Ports. The auditee is engaged in supplying these in domestic market. The auditee is not engaged in exports.

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2. The Customs Premises Based Audit (PBA) of the records of the Auditee covering the period FY 2018-2019, 2019-20 & 2020-2021 was conducted under Section 99A of the Customs Act, 1962 during 14.11.2022 to 16.11.2022, 28.11.2022, 29.11.2022 and 8.12.2022 to 09.12.2022. The Auditee was informed about the audit schedule vide letter No. CADT/CIR/ADT/PBA/119/2020-PBA-Cir-B-3-O/o-Commr-Cus-Adt-Delhi/3242 dated 15.02.2021 (**RUD-1**). The audit could not be conducted continuously as the auditee sought time for providing details/documents required by the auditors.

3. During the course of audit and on examination of records the following discrepancies have been observed:-

Para-I: In 298 Bills of Entry the Inco-terms mentioned in the invoice were not as per the Inco-terms declared in the Bills of Entry. In all the said Bills of Entry the insurance value was not included in the Assessable Value resulting in short payment of Custom duty amounting to Rs.4,11,538/- (**Annexure-A**).

Para-II: Foreign Currency declared in two Bills of Entry i.e., BOE No. 6278253 & 6278336 both dated 07.05.2018 was found to be different from the foreign currency as declared in the import invoice. The foreign currency as per the invoice was found as Euro whereas in the Bills of Entry the same was declared as USD. The said mis-declaration has resulted in short payment of Customs duty amounting to Rs. 4,47,796/- (**Annexure-B**).

Para-III: In two Bills of Entry i.e., 6973364 dated 27.06.2018 & 7642776 dated 14.08.2018 it has been observed that the importer has not correctly declared the invoice value in the Bills of Entry as per import invoice which has resulted in short levy of duty amounting to Rs. 33,603/- & 52,925/- (Total of Rs. 86,528/-) respectively. (**Annexure-C**).

Para-IV In 7 BOEs the Inco Terms was mentioned as 'FOB' in the invoice while the same was mentioned as 'CIF' in the BOE, the said mis-declaration has resulted in short levy of Customs duty amounting to Rs. 5,09,204/- (**Annexure -D**).

The details of Annexure A to D are as under :-

SL. no.	Issue in Brief	Amount short levied/short paid				
		Assessable Value of Goods	BCD	SWS	IGST	TOTAL
1	Para-I: In 298 Bills of Entry the Inco-terms mentioned in the invoice were not as per the Inco-terms declared in the Bills of Entry. In all the said Bills of Entry the insurance value was not included in the Assessable Value resulting in short payment of Custom duty amounting to Rs. 4,11,538/- Accordingly, auditee is liable to pay Customs duty along with applicable interest and penalty.	535614472	103029	10303	298206	411538
	Para-II: Foreign Currency					

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2	declared in two Bills of Entry i.e., BOE No. 6278253 & 6278336 both dated 07.05.2018 was found to be different from the foreign currency as declared in the import invoice. The foreign currency as per the invoice was found as Euro whereas in the Bills of Entry the same was declared as USD. The said mis-declaration has resulted in short payment of Customs duty amounting to Rs. 4,47,796/- Accordingly, auditee is liable to pay Customs duty along with applicable interest and penalty.	8593169	144544	14454	288798	447796
3	Para-III: In two Bills of Entry i.e., 6973364 dated 27.06.2018 & 7642776 dated 14.08.2018 it has been observed that the importer has not correctly declared the invoice value in the Bills of Entry as per import invoice which has resulted in short levy of duty amounting to Rs. 33,603/- & 52,925/- respectively. Accordingly, auditee is liable to pay Customs duty along with applicable interest and penalty.	6903804	0	0	86528	86528
4	Para-IV: In 7 BOEs the Inco Terms was mentioned as 'FOB' in the invoice while the same was mentioned as 'CIF' in the BOE. The said mis-declaration has resulted in short levy of Customs duty amounting to Rs. 5,09,204/-	3305483	0	0	509204	509204
Total		554416928	247573	24757	1182736	1455066

4. Auditee vide letter dated 01.01.2023 and 02.03.2023 submitted para-wise reply as under:-

Auditee's reply in respect of :-

Para-I – "All the import documents including those from the Audit has noticed as above, were available for inspection and scrutiny by the Officers of Appraisement Group (Appraiser & the Assessing Officer) and also by the Shed /Drawback officers (Examiner, Superintendent & Deputy Commissioner). In case of any discrepancy, it was the responsibility and duty of the Customs officers to point out such discrepancies at the

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time assessment of the Bill of Entry and before allowing clearance of the shipment the Assessing officer has been empowered under Section 17 of the Customs Act to reassess the Bill of Entry and charge the appropriate amount of duty.

The Auditee is confident that whatever duty was assessed (levied) by the Assessing Officer it was paid. There is no case of short payment of any duty.

However, if for any reason the Assessing Officer could not levy and assess the correct amount of duty and if in any case it escaped the attention of the Customs Officers; there is a legal remedy available with the Proper Officer if there was been any short levy and he can proceed to recover the short levied duty under Section 28(1) of the Customs Act which was short-levied or short-paid whatever the proper officer takes a view as to whether it is case of short-levy or short-payment in view of Section 28(1)(a)".

Para II – "All the impugned Import Invoices from where the Audit has noticed as above, were submitted to the Customs while filing the Bill of Entry for seeking clearance of the imported goods. And both of these invoices were available for examination, and scrutiny by the Officers of Appraisement Group (Appraiser & the Assessing Officer) and also by the Shed /Dock officers (Examiner, Superintendent & Deputy Commissioner). Had any of these officers noticed this discrepancy, it was their bounden duty to take cognizance and proceed to reassess the Bill of Entry after determining the Assessable Value in INR applying the conversion rate of the particular foreign currency as per the relevant Notification issued in this respect and charge appropriate duty accordingly under the provisions of Section 17 of the Customs Act, 1962".

"Further submitted that there is no case of short-paid duty, whatever amount of duty was levied and assessed by the Proper Officer it had been paid by the importer. Had there been any case of short payment of any amount of duty, the Customs would not have allowed clearance of the goods.

However, if for any reason if it has escaped the attention of all of the five Customs Officers, there is a legal remedy available with the Proper Officer and he can proceed to recover the short-paid duty only after holding that there was a case of short-levy under Section 28(1) of the Customs Act.

Para-III – "Audit has not elaborated as to on what count there was short levy. In the absence of any information which may have resulted in short levying the duty by the Proper Officer. It is therefore prayed that let the Proper Officer proceed to determine the amount of duty if there was any short levy before the importer is asked to pay the short levied amount without orders having been issued under Section 17 & 28 of the Customs Act, 1962".

Para- IV – "It may please be appreciated that the as per the terms of the Agreement between the Shipper and the Importer the agreed price was not on FOB basis. Your goodself is requested to have a look at the Bill of Lading where it has been clearly mentioned that the freight is prepaid in Malaysia. And nothing on account of Ocean Freight has been paid by the importer in addition to the prices shown in the Import Invoice. The matter has been taken up with Shipper and he informed that the words FOB has been inadvertently typed in the Invoices. And since they were required to

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mention the FOB value while seeking the COO Certificate, the CIF value as per the Proforma Invoice (Agreement) was wrongly mentioned with words FOB. In other words the price charged by the Shipper in the Invoice is not the FOB value. It may also please be appreciated that in some cases the import was against Letter of Credit and in the LC also the value for which LC was obtained was not the FOB Value. Hence there is no occasion for presuming that the Ocean Freight has been borne by the importer over and above the Invoice price and in these circumstances there is no occasion for demanding any duty of the Ocean Freight which are already included in the Invoice value".

5. Legal Provisions: -

5.1 *Section 28(4): Where any duty has not been 12[levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-*

- (a) *collusion; or*
- (b) *any wilful mis-statement; or*
- (c) *suppression of facts,*

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been 13[so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

5.2. **SECTION 46. Entry of goods on importation. — (1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting [electronically] [on the customs automated system] to the proper officer a bill of entry for home consumption or warehousing [in such form and manner as may be prescribed] :**

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, [and such other documents relating to the imported goods as may be prescribed].

[(4A) The importer who presents a bill of entry shall ensure the following, namely :—

- (a) *the accuracy and completeness of the information given therein;*
- (b) *the authenticity and validity of any document supporting it; and*
- (c) *Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.]*

5.3 **SECTION 111.** *Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable to confiscation:*

(m) [any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54];

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

5.4 **SECTION 114A.** *Penalty for short-levy or non-levy of duty in certain cases. - Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has [xxx] been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined :*

[Provided that where such duty or interest, as the case may be, as determined under [sub-section (8) of section 28], and the interest payable thereon under section [28AA], is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :

6. Show Cause Notice:

An opportunity was given by the Audit Team to the Noticee to pay the said short payment of Duty amounting to Rs. 14,55,066/- (Fourteen Lakh Fifty Five Thousand Sixty Six only). Further, M/s. Singla Timbers Private Limited are hereby called upon to show cause within thirty days from the date of receipt of notice to the Adjudicating Authority i.e. The Additional Commissioner of Customs, Custom House Mundra, office of the Commissioner of Customs, Mundra, Kutch Gujarat-370421, as to why:-

- i. Total differential duty amounting to Rs. 14,55,066/- (Fourteen Lakh Fifty Five Thousand Sixty Six only) on impugned goods imported vide Bills of Entry as mentioned in

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annexures (attached along with this Notice) should not be demanded and recovered in Cash/E-payment challan under Section 28(4) of the Customs Act, 1962 along with the interest thereon as per Section 28AA of the Customs Act, 1962, as applicable;

- ii. All the goods imported vide Bills of Entry mentioned in annexures which were self-assessed and have already been cleared, having assessable value to the tune of Rs. 55,44,16,928/- (Rupees Fifty Five Crore Forty Four Lakh Sixteen Thousand Nine Hundred and Twenty Eight Only) indicated in annexures, should not be held liable to confiscation under Section 111 (m) & (o) of the Customs Act, 1962;
- iii. Penalty should not be imposed upon auditee under section 112 (ii) read with section 112(a) and/or 114A of the Customs Act, 1962 for short paid differential duty amounting to Rs. 14,55,066/- (Fourteen Lakh Fifty Five Thousand Sixty Six only) (detailed in Annexure-A-D to this SCN).

7. WRITTEN SUBMISSION:-

7.1 Noticee vide their letter Dated 29.05.2023, interalia, reuttered the submission made at relevant time before Audit vide their letter Dated 01.01.2023 and 02.03.2023 (as mentioned in the Show Cause Notice at Para 4, and further more requested to provide with the relevant documents w.r.t. all the Paras viz. Para 1 to Para 4 of the Audit Observation.

7.2 Further wants to know the provisions of the law under which the goods which have already been cleared by the Customs on collection of the assessed duties, can be confiscated without first placing the goods under seizure and also when the impugned goods are not available for confiscation.

7.3 Further mentioned, that, this is the interim reply, shall be submitting detailed reply on receipt of the requested documents; before fixing of personal hearing all the mentioned documents may please be supplied otherwise it is to be treated that the SCN is invalid without supply of RUDs or referred documents to the Notice.

7.4. Noticee in continuation to their submission Dated 29.05.2023, made further submission vide their letter Dated 10.07.2023, wherein, interalia, reuttered for the Relied upon Documents and earlier made submission vide letter Dated 29.05.2023 and in addition, interalia, submitted that,

7.5 Para I of the Audit Observation : noticee failed to understand as to from where the amount have been taken by the Audit; when the source of the figures are not disclosed with basis the duty could be calculated on the imaginary figures; while filing each of the Bill of Entry the noticee had submitted all the import documents under the circumstances, there is no cause for invoking the extended period of limitation as provided under Section 28(4) of the Customs Act, 1962 and requested to drop the Demand.

7.6 Para II of the Audit Observation : Copy of Invoice was made available with the Bill of Entry, it is duty of the Officer to assess the Bill of Entry with correct conversion rate to arrive at the Assessable Value in INR and charge appropriate duty; no case of short payment of Duty, whatever amount of duty was levied and assessed by the proper officer it had been paid by the importer. Hence the case is of short levy under Section 28(1) of the Customs Act, 1962. No grounds or justification to invoke 28(4) of the Customs Act, 1962, hence demand merits to be dropped.

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7.7 Para III of the Audit Observation : reuttered that there is no cause of invoking extended period of limitation, hence this part of SCN merits to be dropped.

7.7.1 All the documents were submitted, while filing each of the Bill of Entry, therefore, failed to verify at material time cannot invoke extended period of limitation as provided under Section 28(4) of the Customs Act, 1962 and placed on reliance certain judgments.

7.7.2. The extended period cannot be invoked the demand of Interest under Section 28AA of the Customs Act, 1962 does not sustain.

7.7.3. The demand against the Goods is not sustainable on being Demand is time barred, confiscation cannot be affected. Further, for the reason that the goods had never been seized, nor are physically available for confiscation, placed reliance on certain judgments in support of their claim.

7.7.4 For proposed Penalty, submitted that, the goods are neither liable to confiscation nor are available for confiscation nor can be confiscated, there is no occasion for imposition of Penalty under Section 112 (a) of the Customs Act, 1962.

7.7.5 For Proposed Penalty, under Section 114A of the Customs Act, 1962, when there is no case of short levy or non levy of duty by reason of collusion, mis statement by the Noticee, is not liable for any Duty Payment (being time barred) or Interest, there is no reason to impose penalty under section 114 A of the Customs, Act, 1962. And requested to drop the Show Cause Notice.

8. **PERSONAL HEARING:-**

Personal Hearing in the matter was held on 13.07.2023 and Shri Rajeev Kumar, Director of M/s Singla Timber Pvt. Ltd., alongwith their Advocate / Consultant / Authorized Representative Shri Rajinder Singh attended the Hearing, wherein, reuttered the submission made on 10.07.2023 and also submitted another case law of M/s Raymond Ltd., Vs. CCE Indore (CA No. 3896-3898/2009 Dated 06.09.2017 and also made following points

8.1 Para I : they agreed that insurance was not included in the Assessable Value which resulted into short payment of Duty, out of which major portion of IGST.

8.2. Para II : they agreed with this para but as explained in the written submission that the demand is not sustainable under Section 28(4) of the Customs Act, 1962.

8.3 Para III : the invoice raised by the supplier included insurance that is why the duty short levied and total duty portion was of IGST.

8.4 Para IV : there was a typographical error in the invoice as FOB got mentioned on the Invoice stead of CIF; resulted in short payment of Duty.

Further, all the Bills of Entry were assessed by Officer; therefore demand under 28(4) of the Customs Act, 1962 is not sustainable and requested to consider the same and taking lenient view in the matter, decide the notice.

9. **DISCUSSION & FINDING**

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9.1 I have carefully gone through the facts of the case, allegation made in the show cause notice as well as those pleaded in the reply as well as explained during the Personal Hearing.

9.2 Opportunity of Personal Hearing was offered, before deciding the proceedings and the same were held on Dated 13.07.2023, therefore, the principle of natural justice is being followed in the matter.

9.3 I have carefully gone through the facts of the case, allegation made in the show cause notice that :

During the course of the Customs Premises Based Audit (PBA) of the records of the Auditee covering the period FY 2018-2019, 2019-20 & 2020-2021 under Section 99A of the Customs Act, 1962 and during the course of audit and on examination of records following discrepancies had been observed :-

Para-I: In 298 Bills of Entry the Inco-terms mentioned in the invoice were not as per the Inco-terms declared in the Bills of Entry. In all the said Bills of Entry the insurance value was not included in the Assessable Value resulting in short payment of Custom duty amounting to Rs.4,11,538/- (Annexure-A).

Para-II: Foreign Currency declared in two Bills of Entry i.e., BOE No. 6278253 & 6278336 both dated 07.05.2018 was found to be different from the foreign currency as declared in the import invoice. The foreign currency as per the invoice was found as Euro whereas in the Bills of Entry the same was declared as USD. The said mis-declaration has resulted in short payment of Customs duty amounting to Rs. 4,47,796/- (Annexure-B).

Para-III: In two Bills of Entry i.e., 6973364 dated 27.06.2018 & 7642776 dated 14.08.2018 it has been observed that the importer has not correctly declared the invoice value in the Bills of Entry as per import invoice which has resulted in short levy of duty amounting to Rs. 33,603/- & 52,925/- (Total of Rs. 86,528/-) respectively. (Annexure-C).

Para-IV In 7 BOEs the Inco Terms was mentioned as 'FOB' in the invoice while the same was mentioned as 'CIF' in the BOE, the said mis-declaration has resulted in short levy of Customs duty amounting to Rs. 5,09,204/- (Annexure -D).

Thereby, total short payment of Duty was total amounts to Rs. 14,55,066/- (Fourteen Lakh Fifty Five Thousand Sixty Six only).

9 . 4 On going through all the submissions made by the noticee, wherein, on one hand reuttered that, they have not been provided with the Relied Upon Documents and on the other side accept that all the relevant documents were uploaded while filing Bill of Entry under Self-Assessment; further they accept that there was mistake and there is short payment of Duty but since the Bills of Entry were passed through the Officer the Demand can be raised as per the provisions of the Section 28(1) of the Customs Act, 1962 and not as per the provisions of the Section 28(4) of the Customs Act, 1962 and therefore the Demand to be Dropped.

9.5 Also gone through the Provisions of Section 17 of the Customs Act, 1962, which reads as,

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I. Consequent upon amendment to the **Section 17 of the Customs Act, 1962** vide Finance Act, 2011, 'Self-assessment' has been introduced in customs clearance. Section 17 of the Customs Act, effective from 08.04.2011 [CBEC's (now CBIC) Circular No. 17/2011 dated 08.04.2011], provides for self-assessment of duty on import of goods by the importer himself by filing a bill of entry, in the electronic form.

II. Further, as per **Point 2 of Circular 17/2011 dated 08.04.2011**:

New **Section 17 of the Customs Act, 1962** provides for self-assessment of duty on imported and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill, as the case may be, in the electronic form (new Section 46 or 50). The importer or exporter at the time of self-assessment will ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported ./ export goods while presenting Bill of Entry or Shipping Bill. This should not pose any new difficulties since the importers / exporters and CHAs have been filing these documents containing the required details regularly in the ICES.

III. **Section 46 of the Customs Act, 1962** makes it mandatory for the importer to make entry for the imported goods by presenting a bill of entry electronically to the proper officer. Further, as per section 46 (4a) of the customs Act 1962, the importer who presents the bill of entry shall ensure the following:-

1. The accuracy and completeness of the information given therein;
2. The authenticity and validity of any document supporting it, and
3. Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for time being in force.

As per Section 46(1)

(1) *The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting to the proper officer a bill of entry for home consumption or warehousing in the prescribed form: Provided that if the importer makes and subscribes to a declaration before the proper officer to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouses appointed under section 57 without warehousing the same.*

Further, in light of Section 46(4) of the Customs Acts, it is the responsibility of the importer to ensure the accuracy and completeness of the information declared in the Bills of Entry, however in the present case the auditee has mis-declared the Inco-terms in the Bills of Entry, value of goods, currency etc.

And as per Section 46(4) :

(4) *The importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.*

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IV. As per **Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011** (issued under Section 157 read with Section 46 of the Customs Act, 1962), the bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the bill of entry.

9.6.1 Following Case laws were cited by the noticee in their support,

1. Commissioner of Central Excise & Service Tax, Goa Vs. M/s IFB Industries Ltd., (2019 ACR 228 CESTAT, Mumbai) wherein it has been held that "Audit Report cannot be the sole ground for invoking extended period"
2. M/s Bedmutha Industries Ltd., Vs. CCE & ST Nashik (2019 ACR 34 CESTAT Mumbai) wherein it has been held that "Suppression charge cannot be made just because Revenue Audit Party had found out errors post audit"
3. Amway India Enterprises Pvt. Ltd., Vs. Commissioner of C. Ex., New Delhi (2018 ACR 157 CESTAT, New Delhi) wherein it has been held that, "No extended period of limitation where Revenue had prior Knowledge".
4. Commissioner of Customs Vs. Magus Metals Pvt. Ltd., (2018 ACR 156 Supreme Court of India) wherein it has been held that, "Normal Period of limitation where Revenue already aware of facts"
5. The Hon'able Supreme Court in the case of Pushpam Pharmaceuticals Co. Vs. Collector of C. Ex. Bombay (1995(3) TII 100-SC) has observed that "a perusal of the proviso to section 11 of the Central Excise Act, 1944 indicates that it has been used in company with such strong words as fraud, collusion or wilful default. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."
6. Yet in another case the Hon'able Supreme Court (Cosmic Dye Chemicals Vs. Collector of C. Ex. Bombay – 1994 (9) TMI 86 SC) has held that "so far as fraud and collusion are concerned, it is evident that the requisite intent to evade duty is built into these very words. So far as misstatement or suppression of facts are concerned, they clearly qualified by the words "misstatement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of the provision of the Act or Rules" are again qualified by the immediately following words 'with intent to evade payment of duty'. Therefore, it is not correct to say that there can be a suppression of misstatement of facts. Which is not wilful and yet constitute a permissible ground for the purpose of the proviso to Section 11A".

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9.6.2 *in addition to above, they submitted that, though some of the above mentioned rulings are with reference to Section 11A of the Central Excise Act but these are equally relevant and are applicable to the provisions of Section 28(4) of the Customs Act, 1962.*

9.6.3 As per the submission, I find that the case laws cited by the noticee are not relevant with the matter under dispute / covered under the impugned Show Cause Notice.

10. From the above discussion, I find that, as per the provisions of the Customs Act, 1962, responsibility of correct calculation / declaration and assessment of the Duty lies on the Importer; on going through the submission made by the Noticee at different time before different forum of the Department, wherein they interalia, agreed with the facts regarding Short Payment of Duty but to stay away from the Liability making efforts to shift the trust and responsibility envisaged by the Department on them, by simply stating that, they filed Bills of Entry as per the provisions of the Customs Act, with supporting documents and the same were assessed by the Officer, therefore, it is the responsibility of the Officer and not of the Importer, but fails to accept that, as per the provisions of the Customs Act, 1962, responsibility to Correctly Assess the Duty Liability and thereby to Declare the same before the Department lies on the Importer and in the case they failed to do so and thereby made Short Payment of Duty and on being pointed out, they accepted there is Short Payment of Duty and searched for the Excuses to escape themselves from their liability.

I find that to correctly calculate / declare and assess Duty Liability on the Goods under Import is the sole responsibility of the Importer as per the Provisions of Section 17 of the Customs Act, 1962 and due to their failure to do so, in the instant case there is Short Payment of Duty, therefore, the Demand issued as per the provisions of the Section 28 (4) of the Customs Act, 1962 is Correct. Under the Circumstances, I find that, the Demand raised under the impugned Show Cause is true, fair and Correct and differential duty is liable to be recovered as per the provision of Section 28(4) of the Customs Act, 1962 alongwith applicable Interest as per the provisions of Section 28AA of the Customs Act, 1962 and also goods are liable for Confiscation, but since the Goods were released at relevant time and are not available for Confiscation, I find that the same is not confessable.

11. In view of the foregoing discussion and findings, I pass the following order:

ORDER

1. I confirm the Demand of Total differential duty amounting to Rs. 14,55,066/- (Fourteen Lakh Fifty Five Thousand Sixty Six only) on impugned goods imported vide Bills of Entry as mentioned in annexures and ordered to recovered the same through Demand Draft / E-payment challan under Section 28(4) of the Customs Act, 1962 from the Importer / Noticee.
2. I order to recover the applicable interest on the Differential Duty as above (1) as per the provisions of Section 28AA of the Customs Act, 1962.
3. I held that the goods imported vide Bills of Entry mentioned in annexures on which there is short payment of Duty, therefore, the impugned Goods, having assessable value to

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the tune of Rs.55,44,16,928/- (Rupees Fifty Five Crore Forty Four Lakh Sixteen Thousand Nine Hundred and Twenty Eight Only) were liable for Confiscation under Section 111 (m) & (o) of the Customs Act, 1962; however, I find that the Impugned Goods are cleared at relevant time and not available for Confiscation under the Circumstances, I refrain from Imposing any Redemption Fine on the Impugned Goods under Import.

4. I impose Penalty of Rs.14,55,066/- (Rupees Fourteen Lakh Fifty Five Thousand Sixty Six only) on the Importer / Noticee as per provisions of section 114A of the Customs Act, 1962 for short paid differential duty amounting to Rs. 14,55,066/- (Fourteen Lakh Fifty Five Thousand Sixty Six only) plus penalty equal to the applicable interest under Section 28AA payable on the duty demanded and confirmed above on Importer/Noticee under Section 114A of the Customs Act, 1962.

12. This order is issued without prejudice to any other action which may be required to be taken against any person as per the provision of the Customs Act, 1962 or any other law for the time being in force.

Signed by
ADDITIONAL COMMISSIONER
Mukesh Kumar
CUSTOMS HOUSE, MUNDRA.
Date: 18-08-2023 18:55:43

Encl: As above.

To,
M/S SINGLA TIMBERS PRIVATE LIMITED,
B-41, UNDER BRIDGE ROAD, NEAR E.S.I. HOSPITAL,
RAJPURA, DIST. PATIALA, PUNJAB -140 401

Copy to :-

1. The Deputy Commissioner of Customs (RRA), Custom House, Mundra
2. The Deputy Commissioner of Customs (TRC), Custom House, Mundra
3. The Deputy Commissioner of Customs (Gr. II), Custom House, Mundra
4. Guard File.